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UNCLAS SECTION 01 OF 02 MUMBAI 000473

SENSITIVE
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TAGS: [ASEC](#) [PTER](#) [PHUM](#) [PGOV](#) [IN](#)

SUBJECT: MUMBAI ATTACKS TRIAL: KASAB'S ATTORNEY SACKED BY COURT, BUT
TRIAL WILL LIKELY CONCLUDE SOON

REF: A. 09 Mumbai 169

[1](#)B. 09 Mumbai 304

MUMBAI 00000473 001.2 OF 002

[1](#)1. (U) Summary: As the prosecution was about to conclude its case on November 30, the presiding judge dismissed the defense attorney for Ajmal Kasab, the primary accused in the November 2008 Mumbai terrorist attacks. The judge immediately appointed the assistant defense attorney as successor, and pushed for a speedy conclusion of the case. The judge removed the defense attorney, Abbas Kazmi, when he refused to allow the admission of testimony of hundreds of witnesses in affidavit form, and waive the right of cross-examination. Observers note that this move may create several grounds for appeal, but nothing that would give rise to an acquittal, and the trial should conclude within two months with the expected verdict. End Summary.

[1](#)2. (U) On November 30, Judge M.L. Tahilyani removed Abbas Kazmi, the court-appointed attorney for the lone surviving accused in the 2008 Mumbai terrorist attacks, charging him with "non-cooperation." Kazmi had represented Kasab since the trial began in April 2009, but Tahilyani was angered by Kazmi's refusal to waive his right to cross-examine hundreds of witnesses, whose testimony the prosecution hoped to admit by affidavit. The prosecutor had hoped to conclude his case on November 26, the anniversary of the terrorist attacks, and announced he would submit affidavits of 340 more witnesses, instead of verbal testimony. On that day, however, Kazmi objected to accepting this testimony in affidavit form, causing the judge to become furious, and accuse Kazmi of delaying the case. The judge claimed that Kazmi had known about the prosecutor's intention to submit these affidavits for some time. Kazmi contended that much of the proposed testimony -- such as doctors' statements as to cause of death and eyewitness accounts -- were more significant than expected and warranted cross-examination. When the court resumed on November 30, Kazmi persisted in his refusal to accept the affidavits without cross-examination, and the judge relieved Kazmi from the case, stating, "The right of the accused to have a just and fair trial does not mean that the advocate appointed by the court shall take advantage of the situation and drag the trial."

[1](#)3. (U) Legal observers confirm that eyewitness accounts and medical testimony would not come within the procedural rules for submitting testimony by affidavit and support Kazmi's stance in

court. Some local attorneys expressed consternation with Judge Talhiyani's actions. Advocate Yug Mohit Chaudhry argued that the removal of Kazmi near the end of the trial has crippled the defense and "undermines the constitutional guarantee of a fair trial." He added that dismissing Kazmi for objecting to the Prosecution's request to submit testimony of 340 witnesses by affidavit alone "may give the appearance of bias," a potential basis for the case to be ordered re-tried. (Note: Since Indian trials are bench trials rather than jury trials, improprieties at trial can be remedied by presenting additional information for a further hearing before the same judge. End Note.)

¶4. (U) Kazmi was immediately replaced by his assistant, K.P. Pawar, whom the court had previously found to be inexperienced and not competent to take over the case when Kasab's previous attorney, Anjali Waghmare, was dismissed for conflict of interest (Ref A). Nevertheless, Pawar indicated to the court that he would cross-examine 140 of the 340 witnesses, and accept the remainder. From December 3-14, he ultimately chose to cross-examine roughly half of the witnesses, including the doctors who performed post mortems on victims, and the two investigating police officers. Special Prosecutor Ujjwal Nikkam told the media on December 6 that he expects the submission of evidence would conclude by December 18 and then the prosecution and defense could begin their final arguments. Kazmi told Congenoff that these arguments could take another month, after which the judge would prepare a written decision for each charge.

¶5. (SBU) According to Kazmi and contacts who have attended court proceedings, the atmosphere at the trial was occasionally hostile to Kazmi. Nikkam, the prosecutor, reportedly referred

MUMBAI 00000473 002.2 OF 002

to Kazmi during the trial as "the terrorist's attorney," "the counsel for Pakistan," and "Abu Abbas" (referring to the suspected mastermind of the 26/11 attack who is in Pakistan), comments which the judge allowed. Observers have noted that this may be sufficient indication of bias on the part of the judge to warrant retrial. Kazmi concedes, however, that given the quantity of evidence pointing to Kasab's direct involvement in the attacks, an appellate court could rule that any bias was immaterial to the ultimate verdict in the case.

¶6. (U) Comment: The court and the lawyers are mindful that the world is watching this trial. The pressure to conclude the case by the November 26 anniversary no doubt played a part in the Court's frustration, but the overwhelming evidence against Kasab, and Kasab's own admission of guilt in court (ref B), has also added to the pressure to bring the matter to an immediate conclusion. The court's termination of Kazmi is a rare occurrence and indicates the court's frustration with the length of trial, mirroring public sentiment. According to sources here, the formal verdict is not likely before February 2010 and while several grounds for appeal have been identified, no one expects any of these could result in an acquittal. End Comment. FOLMSBEE